

Congress of the United States

Washington, DC 20515

October 19, 2011

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Jackson:

We are writing in response to changes the Environmental Protection Agency (EPA) has made to the Texas state emissions budgets under the Cross-State Air Pollution Rule (CSAPR). We applaud the EPA for beginning to take action to remediate CSAPR errors. The recently released proposed rule making revisions to CSAPR emissions budgets in Texas and other states is an important first step in, what we hope is, an ongoing effort.

While we are pleased that the EPA has begun reviewing the flawed CSAPR analyses, the proposed rule's limited scale leaves us concerned that the revisions do not resolve the significant issues we raised in our August 1st letter to Office of Information and Regulatory Affairs Administrator Cass Sunstein. Though any relief is helpful, the proposed rule merely revises a small portion of Texas's annual and ozone-season nitrous oxide and only modestly increases the state's sulfur dioxide budget. Further work to more thoroughly address CSAPR's problems will bolster support and add legitimacy to a rule that has been subject to bipartisan criticism from a number of states.

For example, even with the proposed rule, CSAPR still contains erroneous modeling assumptions that were noted in both our August 1st letter and by other commenters. CSAPR continues to discount capacity factors at generating facilities, and instead often relies on overall nameplate capacity. For example, the rule assumes that the wind will always blow to generate electricity at wind turbines and that other power-plants within Texas operate at unrealistically high operational rates. Furthermore, the proposed rule does not address the inclusion of generating units that are permanently or indefinitely out of service. These errors, together, cause CSAPR to overestimate the ERCOT reserve margin. This EPA's error obviously impacts reliability negatively and highlights the recent warning by ERCOT that CSAPR restrictions would have resulted in capacity shortages in Texas if the rule were in place this past summer. EPA must correct this glaring error to ensure that CSAPR does not cause blackouts in Texas.

The proposed rule's modest revisions do not contend with more fundamental CSAPR concerns expressed in our August 1st letter to Administrator Sunstein. Texas is still forced to comply in a short deadline with strict energy production restrictions which were finalized

significant contribution to non-attainment based on modeled, not monitored data calculations at a single receptor over 485 miles away in Madison County, Illinois. EPA has yet to explain how the final CSAPR arrived at this determination, given the final rule assumes that Texas emissions are half the volume EPA calculated in the earlier proposed rule. In plain English, it is puzzling that Texas was not initially included in the CSAPR with a higher emission estimate than was used in the final rule, when Texas was included.

Furthermore, we continue to question EPA's refusal to include pollution reductions enacted pursuant to CSAPR's predecessor, the Clean Air Interstate Rule (CAIR), in CSAPR's baseline analysis. As discussed in our letter to Administrator Sunstein, this flawed assumption causes CSAPR's forecasts to directly conflict with actual monitored data. EPA announced that Madison County, Illinois had achieved attainment mere months before CSAPR found that Texas will contribute to non-attainment there. In fact, EPA pointed to results at the same receptor that CSAPR now says Texas significantly impacts to conclude that Madison County was experiencing a long-term reduction in upwind emissions. In light of these conflicting results, we believe EPA must reexamine its stance on CAIR reductions.

Finally, the proposed rule does not sufficiently relieve the high regulatory burden Texas faces relative to what EPA determined was a very minor contribution to nonattainment. CSAPR requires states reduce their modeled contribution to nonattainment at a downwind receptor independent of the reductions CSAPR imposes on other states. Thus, CSAPR emissions budgets continue to require very large Texas emissions that seem excessive to the minimal contribution that EPA attributes to Texas. Even with the proposed rule's revisions, CSAPR still submits Texas to unfairly high and unnecessary hardship. EPA should revisit this requirement so as to more properly tailor state regulatory requirements.

Once again, we appreciate EPA willingness to work with parties throughout Texas and other states address CSPAR errors. However, we hope and trust that EPA will address all these issues promptly, in this proposal or through additional rule makings if necessary. Any change in CSAPR that falls short of this measure will not protect Texans from grave economic, energy reliability and lifestyle impacts due to CSAPR. The proposed rule, while an important step, is not enough. Therefore, we look forward to working with EPA to make further necessary changes to fix CSAPR.

Sincerely,

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